United Nations CAT/C/55/2

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
4 September 2015

Original: English

Committee against Torture

Guidelines on the receipt and handling of allegations of reprisals against individuals and organizations cooperating with the Committee against Torture under articles 13, 19, 20 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

General provisions

1. Further to the establishment of a mechanism to prevent, monitor and follow up cases of reprisal against civil society organizations, human rights defenders, victims and witnesses engaging with the human rights treaty body system and the designation of rapporteurs on reprisals (see A/69/44, para. 25) and in the light of the decision taken by the Chairs of the treaty bodies at their twenty-sixth meeting (see A/69/285, para. 111), the Committee against Torture adopts the present guidelines on the receipt and handling of allegations of reprisals against individuals and organizations cooperating with the Committee under articles 13, 19, 20 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. In handling allegations of reprisals, the Committee will follow the Guidelines against Intimidation or Reprisals ("San José Guidelines") adopted by the Chairs of the human rights treaty bodies at their twenty-seventh meeting, held in San José from 22 to 26 June 2015 (see HRI/MC/2015/6).

Article 13

3. The Committee wishes to recall that, pursuant to article 13 of the Convention, each State party shall take steps to ensure that the complainant and the witnesses are protected against all ill-treatment or intimidation as a consequence of the complaint made or any evidence given. In the context of the Committee's operation, reprisals can occur in Geneva, in the home country of the person or organization concerned or elsewhere.

4. Reprisals constitute a form of cruel treatment or punishment under article 16 of the Convention and may amount to torture in certain circumstances.

5. When information related to alleged reprisals comes to the attention of the Committee, whether during or between its sessions, which are held in Geneva, the

* Adopted by the Committee at its fifty-fifth session (27 July-14 August 2015).

GE.15-14999(E)

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Committee should be prepared to review and respond to them. For this purpose, it shall appoint at least one rapporteur and the secretariat shall designate focal points from among its staff members.

Article 19

6. The Rapporteur on reprisals, with the assistance of the secretariat, should:

(a) Receive complaints and information regarding reprisals, including through the secretariat;

(b) Inform the secretariat about any allegations received directly, irrespective of the source of the allegation;

(c) Encourage the submission of information in written form; if the complainant cannot provide written submissions, he or she may transmit information orally to the Rapporteur or the secretariat and the Rapporteur will make a note of the conversation;

(d) On the basis of available information, make a preliminary assessment of the threat; information on allegations that relate to acts or threats of reprisal in a State party to the Convention should be verified by referring to reliable sources, including the secretariat, relevant non-governmental organizations and the media;

(e) Where relevant, inform and consult relevant mandate holders, including, when appropriate, the country rapporteurs of the Committee and of other treaty bodies, on each case;

(f) Liaise with the secretariat, which will maintain a file of all relevant documentation;

(g) Act only with the agreement of the complainant; when he or she cannot be reached or express such agreement, his or her relatives and representatives should express agreement on his or her behalf;

(h) Prepare a recommendation for action;

(i) Monitor developments in the case through the secretariat.

7. All allegations shall be treated with the utmost confidentiality and in accordance with the principle of "do no harm".

8. Where the information is considered reliable and the preliminary assessment determines that there is a real threat or that a violation has been committed, the Rapporteur, in consultation with the Chair of the Committee, and, when possible, the country rapporteurs and the secretariat, will decide on the appropriate course of action, which may include the following steps:

(a) Communicate with the Permanent Representative of the State concerned, request information and recommend action to be taken;

(b) After having made contact with the Permanent Representative of the State concerned, issue a public statement condemning reprisals and requesting that victims be protected, and consider issuing a joint public statement with other relevant bodies and mandate holders;

(c) Inform other relevant bodies and officials, including mandate holders, other treaty bodies and relevant sectors of the secretariat, as appropriate;

(d) Inform the national human rights institution and the national preventive mechanism or mechanisms on the case, as appropriate.

9. Where the information is considered not reliable, the alleged victim should be informed that no further action will be taken at that stage.

Article 20

10. As a preliminary measure before the visit, the Committee should explicitly include the clause of non-retaliation in the official document containing the terms of reference of a visit to the State party under inquiry that the Committee usually sends to the State authorities, making direct reference to article 13 of the Convention.

11. In the standard questionnaire that is usually prepared for interviews with persons in places of detention during a mission of inquiry, a question should be included on whether the person or group interviewed would agree to establish contact (by e-mail, postal address or other means) with the Committee, through its secretariat. Establishing such willingness would make it possible rapidly to alert the Committee members concerned of an act or threat of reprisal.

12. Similarly, United Nations country teams, national human rights institutions, non-governmental organizations, lawyers and national preventive mechanisms, as appropriate, could be provided with a contact in the secretariat, so as rapidly to alert the Committee when cases of reprisals come to their knowledge.

13. It should be made clear to all concerned that any action on allegations of reprisals would take into account, as a matter of priority, the need to preserve the security of the person or persons threatened. No name of persons or places or any sensitive information will be disclosed if such information jeopardizes the security of the complainants, their representatives or witnesses. At the end of the mission, during their last meeting with the authorities of the State concerned, the Committee members conducting the inquiry should explain that they are keeping the contact information of those interviewed to ensure follow-up and update the information received during the visit, as necessary.

14. Doing so would signal to the authorities concerned that the Committee could receive information on cases of reprisals against those who have cooperated with it.

15. In certain cases, when the authorities concerned express criticism of those who have cooperated with the Committee, for instance by accusing them of providing false or politically motivated information, the Committee could state that it keeps the contact address of those who have cooperated with it so as to receive information on any kind of reprisal to which they might be subjected.

16. A registry with the identifying and other personal data of those who have cooperated with the Committee during an inquiry should be kept by the secretariat. This would make it possible to establish the "history" of those individuals or groups at risk of being subjected to reprisals.

17. The maintenance of such a registry would be particularly important for persons in places of detention interviewed by Committee members. Specific information, such as the date of a meeting with the Committee, as well as other information on treatment, the place of arrest and detention, the charges and the judicial decisions, should be collected on such persons.

18. No name or other information would be disclosed in the event that the security of the person concerned cannot be fully guaranteed. In no circumstance would the name of a minor be made public.

19. On the basis of experience developed during missions carried out under article 20, the ideal method to ascertain if the Committee's recommendations have been implemented

would be for the Committee to be authorized by the Government concerned to carry out a follow-up visit one or two years after the conclusion of the inquiry.

20. Moreover, the planning and acceptance by the State party concerned of a follow-up visit would enhance the level of protection of those who have cooperated with the Committee because the authorities concerned would be aware of the possibility that the Committee could be contacted directly by those cooperating with and, therefore, that no act or threat of reprisal could be hidden.

21. Finally, the Committee should notify the State party under inquiry that cases of sanctions being applied to persons who have cooperated with the Committee would be included in a summary account of the proceedings relating to the inquiry and be made public.

Article 22

22. As a preliminary measure to prevent reprisals against persons involved in the individual complaints procedure under article 22 of the Convention, the Committee could notify the State party concerned not to bring pressure to bear on or threaten the author of a communication when the Committee requests interim protection measures. If the issue arises upon registration, it is up to the Special Rapporteur on new communications and interim measures to evaluate the situation and to decide whether to send such a warning. If the issue arises for a registered communication under the follow-up procedure, the Rapporteur on reprisals should evaluate the situation and decide on the course of action.

23. Similarly, representatives of complainants, such as lawyers, relatives or organizations, should be informed that the Rapporteur on reprisals could bring to the attention of the authorities of the State party concerned allegations of threats, acts of intimidation or other forms of reprisal and to approach representatives of the State party, as necessary, to make an official protest and ask for remedial action.

24. Similar action may be necessary also in cases of fear of reprisals. It appears that some complainants fear being subjected to reprisals simply for having submitted a complaint to the Committee.

25. This is even more evident in cases concerning article 3 of the Convention. The mere fact of requesting asylum because of an alleged risk of being tortured in the country of return may be perceived negatively by the authorities of that country and expose the complainant to reprisals if he or she is actually returned.

26. When there is a foreseeable, personal and real risk that a complainant who is about to be deported will be subjected to reprisals amounting to torture or other cruel, inhuman or degrading treatment or punishment in the country of deportation, the Committee considers that the principle of non-refoulement applies and will request the State party concerned to refrain from carrying out the deportation.

United Nations CAT/C/55/3

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
17 September 2015

Original: English

Committee against Torture

Guidelines for follow-up to concluding observations*

Introduction

1. At its thirtieth session, in May 2003, the Committee against Torture adopted a procedure for follow-up to concluding observations on reports of States parties submitted under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see A/58/44, para. 12). The procedure consists of the Committee identifying, among the recommendations in the concluding observations, those for which implementation is a priority and requesting additional information from the States parties, as established under rule 72, paragraphs 1 and 2, of the Committee's rules of procedure. That follow-up procedure has become an important means of assessing the degree to which compliance with the Committee's recommendations has had an impact. It has also become an integral part of the reporting cycle.

2. Since then, the Committee has periodically revised its follow-up procedure. At its fifty-third session, in November 2014, the Committee decided to establish a working group to review the procedure and present proposals on ways to strengthen it. At the fifty-fifth session, the working group, composed of three Committee members (Felice Gaer, Jens Modvig and Sapana Pradhan-Malla), presented a document aimed at identifying both old and new elements that would strengthen the procedure, thus contributing to harmonizing the treaty bodies' methods of work (see A/65/190, para. 33, and annex I, para. 40 (e) to (g)). At the same session, the Committee adopted the present guidelines.

Rapporteur for follow-up to concluding observations

3. In accordance with rule 72 of its rules of procedure, the Committee has at least one mandate holder in charge of the follow-up procedure. To date there has been one Rapporteur for follow-up to concluding observations at any given time.

4. The Rapporteur's responsibilities range from the adoption of concluding observations to the discontinuation of the follow-up procedure, which may coincide with the adoption of concluding observations made during the subsequent reporting cycle, when compliance by the State party under review with the procedure is assessed.

* Adopted by the Committee at its fifty-fifth session (27 July-14 August 2015).

GE.15-15674(E)

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5. The Rapporteur analyses the information provided by States parties on the recommendations made in the framework of the follow-up procedure and assesses it in consultation with the country rapporteurs. That may include an assessment of the implementation plan prepared by the State party, if it has been provided. The Rapporteur shares his or her views on the assessment with the State party concerned.

6. At each session of the Committee, the Rapporteur presents, in public session, a progress report, a summary of which is included in the Committee's annual report to the General Assembly.

Criteria for identifying and selecting recommendations for follow-up

7. The recommendations selected for follow-up must contribute to the prevention of torture and the protection of victims, for example by resulting in:

(a) The strengthening of legal safeguards for people deprived of their liberty;

(b) The conduct of prompt and impartial investigations of alleged cases of torture or ill-treatment;

(c) The prosecution of suspects and the punishment of perpetrators of torture or ill-treatment;

(d) The provision of redress to victims.

8. Moreover, it should be possible for the recommendations to be implemented within one year.

9. In accordance with these criteria, the Committee selects a maximum of four recommendations for follow-up. The recommendations should be formulated in such a way as to facilitate their implementation and monitoring (i.e. they must be specific, measurable, attainable, realistic and time-bound). To the extent possible, the Committee will avoid selecting recommendations that include several components.

10. The selected recommendations are specifically identified in a paragraph at the end of the Committee's concluding observations. In this paragraph, the State party is requested to report to the Committee within a year on the measures taken to give effect to the recommendations. While the Committee expects States parties to implement all the recommendations in its concluding observations, States parties are requested to promptly and urgently implement the recommendations for follow-up in order, inter alia, to prevent torture from taking place, investigate allegations of torture or ill-treatment and provide redress to victims.

Implementation plan

11. States parties are encouraged to provide to the Committee, along with the report on the implementation of the recommendations for follow-up mentioned in paragraph 10, a voluntary plan for the implementation of all or some of the remaining recommendations included in the concluding observations. The Committee encourages States parties to start implementing the recommendations early on in the reporting cycle and to formulate a plan for and prioritize implementation. Specifically:

(a) The implementation plan should address some or all of the recommendations not selected for urgent follow-up and describe how, when and by whom those recommendations will be implemented during the upcoming reporting period;

(b) States parties wishing to hold a meeting with the Rapporteur relating to their follow-up report and the implementation plan will be invited to do so.

Follow-up report by States parties

12. When submitting a follow-up report, States parties should adhere to the following guidelines:

(a) The report should provide the Committee, through its Rapporteur, with sufficient information to allow for an assessment of whether the recommendations have been implemented. The report should also include a schedule for the implementation of all or some of the remaining recommendations;

(b) The report should be concise and not exceed 3,500 words;

(c) The report should be drafted in one of the six languages of the United Nations;

(d) An electronic version of the report, in Word, should be sent to cat@ohchr.org.

13. Upon submission, information provided by States parties under the follow-up procedure set out in article 19 will be made public on the Committee's web page.

Follow-up submissions by national human rights institutions, non-governmental organizations and other stakeholders

14. National human rights institutions, non-governmental organizations and other stakeholders may at any time after the adoption of the concluding observations submit written information to the Committee under the follow-up procedure. However, the Committee encourages these entities to submit that information within three months of the deadline for submission by the State party concerned of its follow-up report, as doing so allows for comments to the State party's report.

15. When submitting an alternative follow-up report, national human rights institutions, non-governmental organizations and other stakeholders should adhere to the following guidelines:

(a) The report should focus only on the implementation by the State party of recommendations identified for follow-up;

(b) The report should be concise and not exceed 3,500 words;

(c) The report should be drafted in one of the six languages of the United Nations;

(d) An electronic version of the report, in Word or PDF, should be sent to cat@ohchr.org.

16. Upon submission, reports provided by national human rights institutions, non-governmental organizations and other stakeholders will be made public on the Committee's web page.

Analysis of information on the status of implementation of the recommendations identified for follow-up

17. The Rapporteur for follow-up assesses whether all the issues identified by the Committee for follow-up have been addressed by the State party and whether the information provided responds to the Committee's concerns and recommendations. Information received from national human rights institutions, non-governmental organizations or other stakeholders will also be taken into consideration by the Rapporteur, along with other information that has come to his or her attention as an independent expert. According to rule 72, paragraphs 1 and 2, of the rules of procedure, the Rapporteur shall assess the information provided by the State party in consultation with the country rapporteurs.

18. The assessment carried out by the Rapporteur includes an assessment of the quality and extent of the information provided, as well as an assessment of the degree to which the recommendations identified for follow-up have been implemented. The assessment categories below are used by the Rapporteur in drafting replies to States parties on behalf of the Committee.

19. The information provided will be assessed, by follow-up recommendation, using the following classification:

(a) The information is thorough and extensive, and relates directly to the recommendations (satisfactory - 3);

(b) The information is thorough and extensive, but fails to respond fully to the recommendations (partly satisfactory - 2);

(c) The information is vague and incomplete and/or fails to address the recommendations (unsatisfactory - 1);

(d) The State party has not addressed the concern or recommendations in the response (no response - 0).

20. Implementation will be assessed, by follow-up recommendation, using the following categories:

(a) The recommendation has largely been implemented (the State party has provided evidence that sufficient action has been taken towards the full or almost full implementation of the recommendation - A);

(b) The recommendation has been partially implemented (the State party has taken substantive steps towards the implementation of the recommendation but further action is needed - B1);

(c) The recommendation has been partially implemented (the State party has taken initial steps towards implementation but further action is needed - B2);

(d) The recommendation has not been implemented (the State party has taken no action to implement the recommendation or the action taken has not addressed the situation - C);

(e) The information provided is insufficient to assess implementation (the State party has not provided enough information on the measures taken to implement the recommendation - D);

(f) The recommendation has been counteracted (the State party adopted measures that are contrary or have results contrary to the recommendations of the Committee - E).

21. The implementation plans will be graded as follows:

(a) The implementation plan largely addresses all of the Committee's recommendations (A);

(b) The implementation plan addresses some of the Committee's recommendations (B);

(c) The implementation plan has not been provided (C).

Communication sent by the Rapporteur for follow-up

22. The Rapporteur shall communicate with States parties under the follow-up procedure once their report has been received and assessed (i.e. between 15 and 18 months after the adoption of the concluding observations). Such communications shall reflect the analysis carried out by the Rapporteur, specify the pending issues and indicate a time frame for the reply, which shall be of no less than six months. A request for additional information shall be sent no later than six months after the submission of the State party's follow-up report. These communications are subject to approval by the country rapporteurs.

23. In case of partial or no implementation (categories B or C), the State party is encouraged to fully implement the recommendation before the next reporting cycle and to provide additional information, within a specific time frame or in the next periodic report, on specific passages of its previous reply that require clarification or on additional steps taken by the State party to implement the recommendation.

24. In case of insufficient information for an assessment to be made (category D), the Committee renews its request for information on the steps taken to implement the recommendation. In such cases, the State party is informed that its degree of compliance with the procedure will be reflected in the subsequent reporting cycle.

25. In case of measures taken that are contrary to the recommendation of the Committee (category E), the Rapporteur regrets that such measures were taken and/or reiterates the Committee's recommendation.

26. Follow-up communications sent to the State party, through its Permanent Representative, requesting further information may include an invitation to meet with the Rapporteur to clarify any remaining questions about the recommendations, the implementation plan and the assessment of their implementation. Should the State party not have implemented the recommendations, the Rapporteur may request from the State party an account of the obstacles that have prevented implementation.

27. If the State party fails to submit its report, the Rapporteur shall send a reminder. No more than two reminders should be sent. The first, sent around three months after the deadline for submission of the follow-up report, reminds the State party of the request for such a report, whereas the second, sent around six months after the deadline, shall contain a request for a meeting with the State party's Permanent Representative in order to further collaboration with the Committee.

28. The Rapporteur may request and hold consultations with State party representatives to obtain the information sought by the Committee, explain why the information is sought and agree on a date by which the information will be sent by the Permanent Mission. In preparing such meetings, the Rapporteur should consult with the country rapporteurs, as in other elements of the follow-up process.

Further steps in the follow-up procedure

29. Questions about recommendations for follow-up that have not been fully implemented and instances where the State party has failed to comply with the procedure shall be reflected in the list of issues or in the list of issues prior to reporting adopted during the next reporting cycle under a separate headline, entitled "Follow-up questions from the previous reporting cycle". If appropriate, follow-up issues may be repeated in the main section of the list of issues or in the list of issues prior to reporting in order to maintain the sequence of topics addressed.

30. The concluding observations adopted in the framework of the next reporting cycle shall similarly reflect the outcome of the follow-up procedure, in the light of the consideration of the periodic report. In case of compliance with the follow-up procedure and recommendations, this shall be mentioned under the section entitled "Positive aspects". In case of remaining follow-up questions, the concern shall be mentioned as the first item in the section headed "Principal subjects of concern and recommendations", under the subheading "Pending follow-up issues from previous the reporting cycle". Secretariat staff shall be informed of the requirements set out above to treat these follow-up issues as distinct from the rest of the list of issues prior to reporting, which may contain an article-by-article list of questions.

Discontinuation of the follow-up procedure

31. The follow-up procedure can be discontinued only if the Committee considers that the information submitted by the State party is satisfactory and the recommendations have been largely implemented (category A). In all other cases, the unimplemented recommendations will be incorporated into the subsequent reporting cycle.

Committee web page on the follow-up procedure

32. The recommendations identified for follow-up by the Committee, the information submitted by States parties, the letters sent by the Rapporteur for follow-up and the information submitted by national human rights institutions, non-governmental organizations and other stakeholders are part of the public procedure framing the submission of reports prepared under article 19 of the Convention and shall be posted on the Committee web page on the issue.[1]

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[1] See http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CAT&Lang=en.